# F M. S. REPORTS

[APPELLATE CRIMINAL JURISDICTION]
THOMAS, C.J. (F.M.S.), HUGGARD, C.J. (S.S.) & BURTON, J.

February 1, 1935.

KADER BATCHA ..... Appellant.
PUBLIC PROSECUTOR ..... Respondent.

[NEGRI SEMBILAN CRIMINAL APPEAL No. 6 of 1934]

*The Common Gaming Houses Enactment, 1912, section 4 (i) (d) —Selling lottery tickets and assisting in carrying on a public lottery.*

A bona fide private lottery cannot become an illegal lottery by the unauthorised act of a single one of its members in selling tickets to the public. A lottery only becomes a public lottery if the public or any class of the public has or may have access to it. But a person may make use of tickets in a private lottery for the purpose of promoting or organising a separate and distinct lottery of his own and, if he does so, then such subsidiary lottery is deemed to be a public lottery until the contrary is proved and will subject persons assisting in carrying it on or selling tickets therein to the penalties prescribed in the Enactment.—*Per* Sir Samuel Thomas, C.J. and Sir Walter Huggard, C.J. (Straits Settlements). In selling tickets to the public a member of a private lottery constitutes himself a channel through which tickets can be bought and prizes drawn by the public, and in so doing the public are given access to the lottery, thereby converting it into a public lottery. The promoters of such a lottery can escape from the penalties prescribed by the Enactment by proving absence of *mens rea* on their part.—*Per* Burton, J.

*V. D. Knowles* and *A. J. Bostock Hill* for the appellant.

*H. C. Willan*, Deputy Legal Adviser, for the respondent.

*Cur. Ad. Vult.*

**THOMAS, C.J.**—This is an appeal by Kader Batcha from his conviction by the learned Magistrate of Seremban for offences contrary to section 4 (i) (d) of the Common Gaming Houses Enactment 1912. Originally the appeal came before Mudie, J. at Seremban, and he, in exercise of the discretion given to him by section 55 of Courts Enactment, directed that the appeal should be heard and determined by this Court of Appeal.

At the trial before the learned Magistrate the evidence showed that the Perak Turf Club held two race meetings on the 17th and 18th of August, 1934, and organised two unlimited sweeps for each of those race meetings. Those sweeps were subject to conditions, set out on the back of the tickets, and included the following:

1. For Members of the Perak Turf Club only.
2. Tickets ($1 each) which are not transferable will be issued to Members only on application to the Secretary .
5. . . . . claimants must produce to the Secretary the ticket before payment of the prizes can be made, and payment will be made to the registered holders of the winning numbers only.
8. Any dispute arising will be decided by the Committee of the Perak Turf Club whose decision shall be final.
9. The sweepstake being a private one, no liability is accepted in respect of tickets issued by the Perak Turf Club.
10. The Register of the Perak Turf Club shall be conclusive evidence of title to a Member, and the Club will not be responsible for any error in this ticket.

The appellant was a member of the Perak Turf Club, and purchased from the Perak Turf Club, 4,404 tickets for two meetings. Some of these tickets he sold to members of the public, who were not members of the Perak Turf Club. It was in respect of the tickets so sold by the appellant that the charges were laid against him, and the convictions at present appealed from were obtained.

These convictions were made under section 4 (i) (d) of the Common Gaming Houses Enactment, 1912 which reads as follows:—

> "Whoever receives directly or indirectly any money or money's worth for or in respect of any chance in any event or contingency connected with a public lottery or sells or offers for sale or gives or delivers any lottery ticket shall be punishable . . . ."

A lottery ticket is defined to include:—

> "any paper or figure or writing or symbol or other article whatsoever which either expresses or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contigency connected with any public lottery."

So it is clear that this sub-section is directed against the receipt of money in respect of chances in a public lottery, and also the dealing in tickets connected with a public lottery.

A lottery is defined in section 2 of the Enactment to include:

> "any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot whether the same be held, drawn, exercised or managed within or without the Federated Malay States."

In the same section public lottery is defined as meaning:—

> "a lottery to which the public or any class of the public has or may have access, and every lottery shall until the contrary is proved be deemed to be a public lottery."

There is no question in the present case that the appellant sold tickets in a lottery, but it is contended on behalf of the appellant that the

lottery in question was not a public lottery. The strictness of the rules relating to the sweepstakes of the Perak Turf Club makes it obvious that as far as the Club itself was concerned, it was intended that the sweepstakes organised by the Club should be limited to the members of the Turf Club.

The evidence of Mr. Byers, the Secretary of the Perak Turf Club amply bears out the conditions and terms of the sweepstakes. The appellant avails himself of this evidence and contends that it has been proved that the sweepstakes are not public lotteries, and that therefore, the presumption contained in the definition of a public lottery has been rebutted.

The learned Deputy Legal Adviser has not questioned that the Perak Turf Club sweepstakes as originally organised were non-public lotteries, but has argued that the action of the appellant has had the effect of converting them from non-public to public lotteries.

Now, the definition of a public lottery is very wide, and would seem to include every kind of lottery. A possible exception would be the decision by lot of the ownership of the separate parcels into which a joint property had been partitioned. It has, however, been suggested that there is another far more extensive exception dependent on the meaning to be assigned to the words 'any class of the public.' This question has not been argued before this Court, but it would seem that according to one view the somewhat select membership of a Turf Club excludes such persons from being considered as a class of the public. Some authority for this view may possibly be deduced from such cases as *Rex* v. *Li Kim Poat and another*, (1933) S.S.L.R. 129; 2 Mal. L. J. 164 and *Lim Lian Wah* v. *Lee Ah Kiew and another*, 7 F.M.S.L.R. 66.

In accordance with this view it would seem that the authorities would be prepared to regard sweepstakes organised by Turf Clubs as non-public lotteries, and so exempt from the provisions of the Common Gaming Houses Enactment, provided that such lotteries were strictly limited to the members of such Turf Clubs.

The authorities are not, however, prepared to allow of any extension of this exception, and accordingly it has been contended before this Court that the moment that the public (i.e. non-members of the Turf Club) obtained access to such sweepstakes, the character of the sweepstakes is automatically changed, and they become public lotteries. It has been further contended that this change is not affected by the fact that the access by the public is without the consent of the organisers, contrary to their expressed wishes, and only due to unauthorised breaches of the rules by some one or more members of the Turf Club.

There is no definition in the Enactment of the expression 'access.' In one dictionary to which I have referred, I find that the meaning is given as 'liberty to come to'. And in my opinion the use of the word does connote not only that the public shall be able to take part in the lottery, but also that they shall take part in it with the permission of the organisers. Assuming that the sweepstake is in its inception a purely non-public lottery, I have considerable difficulty in seeing how its character can be changed by the entirely unauthorised invasion by numbers of strangers whose presence has in no wise been invited, and against the possibility of the entrance of whom all reasonable steps have been taken.

I am, therefore, of the opinion that if the Perak Turf Club sweepstakes were non-public lotteries in the first instance, they cannot, as far as the Perak Turf Club is concerned, be converted into public lotteries, and so rendered illegal by tickets being sold to non-members of the Turf Club without the knowledge or approval of the Turf Club. I use the words if the Perak Turf Club sweepstakes were private lotteries in the first instance intentionally. I do not wish anything that I may write in this judgment to be considered as finding definitely that they either were or were not non-public lotteries. That question has not been argued before in this Court. It may have been considered as incapable of argument by the learned Deputy Legal Adviser. I only wish to emphasize that it has been assumed that in the first instance they are non-public lotteries. And so I assume for the purposes of this judgment. I have further come to the conclusion that their character cannot be changed as far as the Perak Turf Club is concerned by any extraneous interference.

But that does not, in my opinion, make an end of the matter. It seems to me that a member of the public may seize upon a perfectly innocent instrument and convert it into one which offends against an Enactment passed for the protection of the public. Much as a child's top can be employed for deciding the amounts to be won by a company of gamblers, or a heap of coins laboriously counted out in fours can develop into a gambling game, the name of which will speedily come to the mind of many people, so a lottery which may be in the first instance comparatively harmless can be extended to an almost unlimited extent by its user for sale of tickets to the public. The public gain access to that lottery not by the permission of the original organisers but by that of the people who sell tickets either individually or broadcast to non-members. Once recognised, there would be no limit to the activities of those who provide the tickets. There would seem to be no reason why they should stop short of public lotteries whose names have become almost household words.

Since I have held that the character of the original sweepstake cannot be changed by such means, am I also to hold that those people who are engaged in the selling of tickets are not committing any offence? I do not think so. The burden is cast upon those people of proving that the lottery with which they are concerned is not a public lottery. They cannot, in my opinion, discharge their burden by proving that somewhere in the background is a non-public lottery. To avail themselves of such a defence they must prove that the lottery in which they are engaged is identical in all respects with that non-public lottery. The moment that any one of the terms controlling the non-public lottery is departed from, then they are engaged in some other lottery which is deemed to be a public lottery.

Some of the terms of the Perak Turf Club have been set out at the commencement of this judgment. The first is that it is for Members of the Perak Turf Club only. The moment, therefore, that a person sells a ticket to a member of the ordinary public, i.e., to a person who is not a member of the Perak Turf Club, he has abandoned any shelter of non-publicity which the original sweepstake may afford, and has engaged in a lottery of a different character. Then the duty is cast upon him of proving that that varied lottery (not the original sweepstakes) is not a public lottery.

In my opinion the infringement of even one rule is alone sufficient. In these sweepstakes the prizes depend directly upon the number of tickets sold. It can readily be seen how the prizes will be increased by the sales of tickets to the general public. Although the occasional sale of one ticket might not have serious effect, and might not be treated very seriously even by the police, yet the sale of many tickets would be likely to render the prizes increasingly attractive and encourage what the legislature considers to be undesirable.

I am satisfied that the appellant has departed from the rules framed by the Perak Turf Club for the regulation of their sweepstakes, and thereby he has become engaged in a lottery which the legislature deems to be a public lottery, until the contrary has been proved. I am satisfied that he has been unable to discharge the burden of proof which has been imposed upon him. In my opinion, therefore the conviction is good and must be confirmed. The sentences inflicted are in my opinion moderate, and I see no reason for interfering with them. These also are confirmed. The appeal is dismissed.

**HUGGARD, C.J. (S.S.)**—The appellant was convicted by the Magistrate, Seremban, upon three charges of having sold lottery tickets contrary to the provisions of section (i) (d) of the Common Gaming Houses Enactment, 1912.

This appeal came before Mudie, J. and he directed, under section 55 of the Courts Enactment, that the appeal should be heard and determined by the Court of Appeal.

There is no dispute as to the material facts. According to the uncontradicted evidence given before the learned Magistrate, the Perak Turf Club held two Race Meetings at Ipoh on the 17th and 18th August, 1934. At each of those Meetings the Club promoted a sweepstake to be held on such race as might be decided upon by the Committee on the day preceding the race day.

On the face of each of the sweepstake tickets issued by the Turf Club appeared the words "For Members only" and "Not Transferable," and the following Conditions *inter alia* were printed on the back:—

"1. For Members of the Perak Turf Club only.
3. Tickets ($1 each) which are not transferable will be issued to members only on application to the Secretary.
5. Claimants must produce to the Secretary the ticket before payment of prizes can be made and payment will be made to the registered holders of the winning numbers only.
9. The sweepstake being a private one, no liability is accepted in respect of tickets issued by the Perak Turf Club.
10. The Register of the Perak Turf Club shall be conclusive evidence of title to a number....."

It was further stated in evidence by Mr. Byers, the Secretary of the Perak Turf Club, that the tickets for these sweepstakes were sold by the Club only to its members, and that a non-member holding a winning ticket would not be paid.

The appellant was a member of the Perak Turf Club and in that capacity purchased and became the registered holder of 4,404 tickets in the two sweepstakes. The appellant sold a certain number of these tickets to three persons who were not members of the Perak Turf Club, and it is in respect of these three sales that the appellant was convicted by the learned Magistrate.

It has not been suggested, either before the learned Magistrate or in this Court, that these sweepstakes as originally promoted by the Turf Club were anything but private lotteries or that they contravened in any manner the provisions of the Common Gaming Houses Enactment. For the purposes of this Judgment, therefore, I assume that the sweeps as originally promoted by the Club were in no way illegal.

Further, it has not been suggested that the sale of tickets by the appellant to non-members of the Club was in any way authorised or approved by the Club authorities or even that the Club authorities were aware of the sale. I

therefore assume, also, that the sale of the tickets took place without the approval or knowledge of the Club authorities.

The question for decision is whether, on the above facts and assumptions, the appellant was rightly convicted of an offence under section 4 (i) (d) of the Common Gaming Houses Enactment.

I turn now to the relevant provisions of that Enactment. Section 4 (i) (d) declares that:—

> "Whoever . . . . . sells or offers for sale or gives or delivers any lottery ticket shall be punishable....."

The expression "Lottery Ticket" is defined in section 2 of the Enactment as including:—

> "any paper or figure or writing or symbol or other article whatsoever which either expressly or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contingency connected with any public lottery."

The definition of "Public Lottery" is:—

> "a lottery to which the public or any class of the public has or may have access,"

and this definition further declares that every lottery shall until the contrary be proved be deemed to be a public lottery.

Finally, the expression "lottery" is defined as including :—

> "any game, method or device whereby money or money's worth is distributed or allotted in any manner depending or to be determined by chance or lot, whether the same be held, drawn, exercised or managed within or without the Federated Malay States."

For the purposes of this case the above expressions may briefly be defined as follows:—

> "'Public Lottery' includes any method whereby money is distributed or allotted in any manner depending upon chance, to which the public or any class of the public has or may have access."

And:—

> "'Lottery ticket' includes any paper or other article which entitles or purports to entitle the holder or any other person to receive money on the happening of any contingency connected with a public lottery."

It is clear, therefore, from these definitions that a person cannot properly be convicted of selling a lottery ticket under section 4 (i) (d) of the Enactment unless the "paper" or "article" which he sells is "connected with a public lottery."

In the present case it was the contention of the prosecution both in the Court below and in this Court that the act of the accused in selling these tickets to non-members of the Perak Turf Club had the effect in law of converting the lottery promoted by that Club, which was originally a private lottery, into a public lottery. This contention, if sound, involves the acceptance of the general proposition that where a private (and therefore legal) lottery is promoted by a Club, under the rules of which the sale of tickets is definitely confined to members of that Club, the sale or transfer of one or more tickets by a member to an outsider, without the authority or knowledge of the Club authorities and, in fact, contrary to the rules of the Club, converts the whole lottery into a public (and therefore an illegal) lottery.

The somewhat startling consequences which would ensue from the acceptance of this general proposition may here be briefly noticed. These consequences are that the unauthorised, and indeed the expressly forbidden, act of a member of a Club in transferring to an outsider a single ticket would render liable to prosecution under the Enactment the members of the Committee responsible for promoting the lottery, every member of the Club who had taken tickets in the lottery, the printers of the tickets, and even the public Press in the event of their publishing the result of the lottery. It was suggested by the learned Deputy Public Prosecutor in the course of the argument before us that in the event of any such prosecutions the persons charged could escape conviction by showing absence of *mens rea*. That may possibly be so, but they would certainly be liable to be prosecuted and the onus would be on them to prove their innocence.

I am, however, quite unable to accept the general proposition stated above or the contention of the prosecution that the act of the accused in the present case had the effect of converting the private lottery promoted by the Turf Club into a public lottery. A lottery only becomes a public lottery if the public or any class of the public has or may have access to it. No statutory definition of the term "access" as used in the Common Gaming Houses Enactment exists and I cannot find that the term as used in this connection has ever been judicially defined, but it appears to me that a reasonable interpretation to be placed on the words "to which the public or any class of the public has or may have access" as used in relation to lotteries is "in which the public or any class of the public is entitled or permitted to participate." The question then is : Can it be said that the effect of the sale of these tickets by the accused to non-members of the Perak Turf Club was to give the purchasers access to the Turf Club lottery or to enable them to participate in it? In my view the answer to this question is clearly in the negative. Admittedly every lottery is presumed to be a public lottery until the contrary is proved, but in my opinion the contrary has been clearly proved in the present case by the evidence of Mr. Byers, the Secretary of the Perak Turf Club. It is clear from his uncontradicted evidence and from the conditions on the

back of the sweepstake tickets that the Club would recognise only its own members and would in no circumstances pay any prize-money to a stranger. It is equally clear that no purchaser of any of the tickets could successfully maintain any claim in respect of them against the Club, as, apart from any other defence which the Club might set up, no privity of contract could be shown to exist between the purchaser and the Club (*Jones* v. *Carter*,) 8 Q.B. 134.

In these circumstances I do not see how it can seriously be contended that the purchasers of these tickets obtained access to the Turf Club lottery. And if they did not obtain access, then the original lottery never became a public lottery.

I have therefore come to the conclusion that, still assuming that the sweepstakes promoted by the Perak Turf Club were originally private lotteries, the sale of these tickets by the accused to non-members of the Club, without the approval or knowledge of the Club authorities, did not alter the character of the lotteries or, in other words, convert them into public lotteries.

This contention, however, does not necessarily absolve the accused. The charges against the accused were in respect of the sale of lottery tickets. Mr. Knowles on his behalf argued that once it was established that the act of the accused had not converted the Perak Turf Club lottery into a public lottery, then the accused could not have committed an offence under section 4 (i) (d) of the Enactment and should be acquitted. But I do not think that that is a necessary consequence. It is true that the accused was charged with selling lottery tickets "of the Perak Turf Club," but I regard these words as being merely descriptive of the "paper" or "article" sold by the accused. The question has still to be considered whether the accused committed an offence against section 4 (i) (d) by selling lottery tickets.

Now there is nothing to prevent a person from making use of tickets in a private lottery for the purpose of promoting or organising a separate and distinct lottery of his own. And that, in my opinion, is what the accused has done in the present case. As Ridley, J. said in *Bartlett* v. *Parker*, (1912) 2 K.B. 503 :—

> "I think a lottery is held whenever there is a sale of tickets which gives the holders of them a chance of winning a prize."

The evidence given in the Court below proved that the accused had sold a considerable number of tickets in the Perak Turf Club sweepstake, the arrangement between him and the purchasers being that if any of those tickets (of every one of which the accused was the registered holder) won a prize in the Turf Club sweepstake, then he would pay over the amount of the prize-money received by him to the person who had purchased that particular ticket from him. It appears to me that every element necessary to constitute a lottery is present in this arrangement. It was a method by which money was to be allotted in a manner to be determined by chance or lot—the chance or lot depending upon the result of the draw at the Ipoh Race Meeting.

It is unnecessary, of course, in order to constitute a lottery, that the promoter should be connected with the drawing of the prizes or that he should be in any way concerned in the event which is to determine the distribution of the prizes (*R.* v. *Crashaw*, 8 Cox C.C. 375). It is also unnecessary that the promoter should make any personal profit out of the lottery [*Barclay* v. *Pearson*, (1893) 2 Ch. 154]. And, further, it is unnecessary that the promoter should provide the prize or prizes out of his own pocket (*Bartlett* v. *Parker*, *supra*).

I take the view, therefore, that on the facts proved in the Court below the accused promoted or organised a separate and distinct lottery; and if that view is correct then the statutory presumption is that the lottery is a public lottery until the contrary is proved. Has the accused here proved the contrary? Clearly he has not. In the Court below no evidence was called for the defence and the learned Magistrate found as a fact that any person who wanted to could have bought tickets from the accused. This finding of fact was in my opinion amply supported by the evidence.

It follows from this that the tickets sold by the accused were "lottery tickets" within the meaning of the Enactment and that in my opinion the accused was properly convicted of selling them. I would therefore dismiss this appeal and confirm the conviction and sentence.

I have, of course, arrived at my decision in this appeal upon different grounds from those set forth in the very careful Judgment of the learned Magistrate in the Court below. The problem before the learned Magistrate was a different one inasmuch as he had before him the conflicting decisions of Howes, J. in *Chin Tin Chin* v. *Public Prosecutor*, (1933-1934) F.M.S.L.R. 266; 3 Mal. L.J. 233 and of Mudie, J. in *Lim Kiang* v. *Public Prosecutor*, (1933-1934) F.M.S.L.R. 293; 3 Mal. L.J. 224, in both of which cases the decisions turned on the answer to the question whether the sale of tickets in a private lottery by a member to an outsider changed that lottery into a public lottery. With respect I think that both learned Judges regarded the matter from a wrong angle, and it is only right to observe that the question whether a separate and distinct lottery had been promoted does not appear to have been suggested to or considered by either of the learned Judges or the learned Magistrate in the present case.

**BURTON, J.**—On 28th September, 1934, the accused was convicted on three charges of selling lottery tickets issued by the Perak Turf Club.

The facts are given by the Magistrate as follows:—

> "The accused has a shop in Paul Street, Seremban. He is a member of the Perak Turf Club and bought 4,404 one dollar tickets for sweeps held on the race meetings on August 17th and 18th, 1934. Thirty of these tickets he sold to a barber at Jelebu, one to a clerk in Post Office, Seremban, and one to a Seremban school boy, the son of the Seremban Post Master. These three persons were none of them members of the Perak Turf Club."

The one point in the appeal is whether the accused was rightly convicted of selling tickets in a public lottery.

Now I think it may be assumed as a basis of argument that the Perak Turf Club was originally conceived as a Private Lottery. The conditions on the back of the ticket provide that it shall be limited to members of the Perak Turf Club; and that as it is a private sweepstake no liability is accepted in respect of tickets issued by the Perak Turf Club. On the face of the ticket is written "Not Transferable" and "For members only."

To succeed the prosecution must shew that in spite of the precautions of the Club to keep the lottery private, the action of the accused rendered it public within the meaning of the Common Gaming Houses Enactment, 1912. This depends primarily on the definition of "Public Lottery" which

> "means a lottery to which the public or any class of the public has or may have access, and every lottery shall until the contrary be proved be deemed to be a public lottery."

The question then narrows itself down to this —Did the accused's action give the public access to the lottery?

There is no doubt that he sold tickets to the public and to that extent gave them access to the lottery. But access to the tickets in a lottery is of no value to anyone without access to the prizes; and it is perfectly clear that no ticket holder who was not a member of the Perak Turf Club would have been allowed to receive a prize from the Club.

Condition 9 on the reverse of the ticket is as follows:—

> "The sweepstake being a private one, no liability is accepted in respect of tickets issued by the Perak Turf Club."

It is clear from this that even a member has no absolute right to receive a prize. He relies on nothing more than the faith that the Club will pay. He has a gentleman's agreement with the Club. But the purchaser of a ticket has not even this gentleman's agreement. Kanapathy Manickman's evidence is—

> "I paid the accused $30 for the tickets. If one of the tickets wins the arrangement is that accused is to inform me and I would produce the ticket to him. Accused would then draw the money. He was to hand over the total amount, no deduction for his trouble. Whether or not I handed over any to him would be his affair."

The purchaser would then have to rely on the faith of the accused. But the accused himself would have access to this lottery, and his purchasers by a similar gentleman's agreement with him would be able to draw their prizes through him. It seems to me clear that by thus constituting himself a channel through which tickets might be bought and prizes drawn by non-members the accused was giving the public access to the lottery, and that the lottery at once by virtue of the definition became a public one.

This is, I think, sufficient to decide the appeal.

But the effect of this reasoning is serious, for the action of the accused might involve all the members of the Perak Turf Club who had taken tickets in a prosecution under section 7, and the managers of the lottery and possibly any newspaper that advertised it, in more serious offences. Mr. Willan accepted this position, but said that such people could easily escape conviction by proving absence of *mens rea*; and I think that view is correct.

But to avoid this serious position it was suggested that it might be held that the accused was managing a public lottery himself with the tickets of the Perak Turf Club, that he had taken tickets in the Turf Club lottery and had sold these, intending to use the machinery of the Perak Turf Club lottery to manage a lottery of his own within the Perak Turf Club lottery. I do not think that such a suggestion is in accordance with the facts. It is not correct to say that the accused was managing a lottery. He was selling rights to prizes in the Perak Turf Club lottery, and it was to the Perak Turf Club that the purchasers looked. The accused exercised no control in the management of a lottery; he did no act except the selling of the Perak Turf Club tickets. The only lottery proved is the Perak Turf Club lottery; the tickets sold by the accused might or might not win a prize in their drawing; and the Perak Turf Club benefited by the sale.

To be logically sound I think this argument must be appropriate to the sale of one ticket only to a non-member. But I think that it is reducing the argument to an absurdity to say that the sale of one ticket in a private lottery constitutes a new lottery within that private lottery. This argument is dangerous too in that it would permit the organisers of a Private Lottery to escape without any responsibility for these illicit sales and yet reap the benefit of the sales in increased Club commission, increased added money and enhanced prizes, and I think that the only possible interpretation of the Common Gaming

Houses Enactment is that the law lays a very heavy responsibility on the organisers of a lottery and a duty to keep it within the prescribed bounds. So long as they take every reasonable precaution to ensure its remaining private, they will no doubt escape prosecution, but they must exercise constant vigilance to prevent illicit sales, and when any have been made they may, I suppose, always reconvert the lottery into a private one by excluding from access to the lottery the tickets which had been sold in contravention of the law.

The public sale of tickets in an otherwise private lottery must, I think, fall under three possible cases:—

(1) The sale of one ticket only to a non-member. This I have already dealt with. There cannot be a one-ticket lottery.

(2) The sale of a block of tickets to a non-member. Two possibilities arise—

(a) One of the tickets in the block may win a prize. In this case although money "is distributed" it is not distributed "by chance" in the sub-lottery. The only distribution by chance is in the head-lottery, and as soon as it is ascertained that a prize is to be given in the sub-lottery, then the distribution of the prize to the purchaser of the block of tickets becomes automatic and is not made by chance. This position could not arise in the head-lottery, because the number of tickets is unlimited.

(b) If none of the tickets in the block wins a prize, the definition of lottery is not satisfied because no money is distributed.

(3) The sale of a number of tickets to a number of non-members. Then if (a) no prize is won by any of these tickets, there is no distribution of money, and the definition is not satisfied. But if (b) a prize is won, then I think in this instance, and in this instance only, can it be said that the definition is satisfied and that there is a distribution of money by chance. In the definition the word "is" (which is not "may be") implies that there must be a distribution of money by chance and not merely the possibility of a distribution. If the lottery is inchoate, there must, at any rate, be an intention to distribute money among the participants in the lottery, not a mere intention to distribute a sum which may or may not be available, in case it does in fact become available. If, therefore, in only one conceivable case, and that not the most probable, it can be said that the hypothesis of a sub-lottery meets the circumstances, then I think that hypothesis must fail and we must reject the sub-lottery. On the evidence we do not know whether any of the tickets sold obtained a prize or not.

I think that the intention of the legislature is clear. A lottery is *prima facie* forbidden, and if anyone undertake to manage a private lottery, he does so at his peril, and he must be prepared at any time to prove that it is and has remained private, and that he had taken every precaution to prevent the public having access to it.

I think, therefore, that this appeal should be dismissed.

*Appeal dismissed.*

---

[APPELLATE CIVIL JURISDICTION]
THOMAS, C.J. (F.M.S.), HUGGARD, C.J. (S.S.) & TERRELL, J.
April 18, 1935.

**IDRIS BIN HAJI MOHAMED AMIN ..... Appellant-Defendant.**

v.

**NG AH SIEW ..... .... Respondent-Plaintiff.**

[PERAK CIVIL APPEAL NO. 5 OF 1935]

*The Malay Reservations Enactment, 1913, sections 7, 8 and 13—Meaning of "right or interest in Reservation-land."*

The appellant, the registered proprietor of certain pieces of land in a Malay Reservation, executed charges in favour of the respondent. Subsequently the appellant executed a full power of attorney in favour of the respondent and, on the same date, an agreement whereby he agreed that this power of attorney should not be revocable until after the repayment of the amounts due under the charges. Before these amounts had been paid the appellant revoked this power of attorney and the respondent brought proceedings claiming, *inter alia*, that the agreement and power of attorney constituted a valid and subsisting contract.

*Held*, that the power of attorney related to a right or interest in Reservation-land and was therefore revocable under sub-section (ii) of section 8 of the Enactment, and that the agreement was contrary to sub-section (i) of section 8.

*Held*, further, that the whole transaction as represented by the power of attorney and agreement was an obvious attempt to evade the provisions of the Malay Reservations Enactment. 1913, and as such was null and void under section 13.

Decision of Howes, J. reversed.

*M. S. Mahendran* for the appellant-defendant.
*John L. Woods* for the respondent-plaintiff.

*Cur. ad. vult.*

**THOMAS, C.J.**—The appellant Idris bin Haji Mohamed Amin a Malay is the registered proprietor of certain pieces of land within a Malay Reservation. These lands he charged to the respondent Ng Ah Siew by charges dated the 6th of May, 1929, and the 14th of August, 1930, for the sums of $6,500 and $13,600 respectively. On the 14th of August, 1930, the appellant gave a power of attorney to the respondent.

In that power it was stated that the appellant was unable to give the respondent an irrevocable power of attorney, but had agreed that the right to revoke the said power should be conditional upon the appellant paying the sum of $20,100 due on the two charges.